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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,267	12/04/2003	William M. Appling	27851/016 (ANGIO P-37)	7104

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COWAN, LIEBOWITZ & LATMAN, P.C.
1133 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

EXAMINER

KOHARSKI, CHRISTOPHER

ART UNIT	PAPER NUMBER
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3763

MAIL DATE	DELIVERY MODE
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10/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/728,267	Applicant(s) APPLING, WILLIAM M.	
	Examiner CHRISTOPHER D. KOHARSKI	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/4/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/06/2008 has been entered.

Response to Amendment

Currently claims 37-45 are pending for examination in this application.

Information Disclosure Statement

The information disclosure statement (IDS) that was submitted on 04/04/2008 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner is considering the information disclosure statement.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 37-39 and 43-45 are rejected under 35 U.S.C 103(a) as being unpatentable over Wang (USPN6,648,024) in view of Parker (USPN5,769,830).

Regarding claims 37-39 and 43-45, Wang et al. a venous access catheter (Figures 11-13) shaft comprising: a proximal tube segment (104) of a first polymer material having a first durometer, a distal tube segment of a second polymer (105) material having a second durometer, said first durometer being substantially higher than said second durometer, a transition tube (106) segment between said proximal and distal segments, said transition tube segment having a continuously varying mixture of said first and second polymer materials (Figure 11-13), the ratio of said first polymer material to said second polymer material continuously decreasing from the proximal end to the distal end of said transition segment, wherein: the flexibility of the proximal segment is substantially equal to the flexibility at the proximal end of the transition segment and the flexibility of the distal segment is substantially equal to the flexibility of the distal end of the transition segment (col 8, ln 20-55), said segments formed by a continuous extrusion process (Figures 4-5) of mixing said polymers to provide an integral catheter tube without bonds or weld, wherein said continuous decrease of polymer ratios and continuous increase of filler weight in said transition zone are substantially linear (cols 3-4, Figures 1-32).

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Wang meets the claim limitations as described above except for the varying radiopaque filler.

However, Parker teaches a soft tip guiding catheter.

Regarding claims 37-39 and 43-45, Parker teaches a catheter (10, Figures 1-2) which comprising a proximal section (17) and a distal tip section (23) and a transition section (near 13) in which the proximal and distal region comprise different polymers having radiopaque filler (35, 34), the percentage by weight of said filler in said second polymer material (35-65%) being substantially greater than the percentage by weight in said first polymer material (10-30%) (Figures 1-4).

At the time of the invention, it would have been obvious to incorporate the radiopaque filler of Parker to the system of Wang in order to improve visualization and to catheter tracking. The references are analogous in the art and with the instant invention; therefore, a combination is proper. Therefore, one skilled in the art would have combined the teachings in the references in light of the disclosure of Parker (col 2, ln 30-50).

Claim Rejections - 35 USC § 103

Claims 40-42 are rejected under 35 U.S.C 103(a) as being unpatentable over Wang (USPN6,648,024) in view of Parker (USPN5,769,830). The modified Wang discloses the claimed invention except for the specific burst strength of 300psi.

Regarding claims 40-42, it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the catheter with the burst strength as claimed since the teachings of Wang provide for a increased strength

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catheter, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233 (CCPA 1955).

Response to Arguments

Applicant's arguments with respect to claims 37-45 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Koharski whose telephone number is 571-272-7230. The examiner can normally be reached on 5:30am to 2:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Date: 10/21/2008

/Christopher D Koharski/
Examiner, Art Unit 3763

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763